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# REVOCATION OF CITIZENSHIP

## EXPERT ROUNDTABLE

LONDON

10 MAY 2019

### SUMMARY REPORT

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Australian Government  
Independent National Security  
Legislation Monitor



## THE ROUNDTABLE

The Australian INSLM is a statutory office established under the *Independent National Security Legislation Monitor Act 2010*.

The INSLM is broadly equivalent to the UK's Independent Reviewer of Terrorism Legislation and is empowered to conduct reviews, on his or her own initiative, and make recommendations with respect to the operation, effectiveness and implications of Australia's counter-terrorism and national security legislation.

The current INSLM, Dr Renwick SC, is conducting a review of the citizenship cessation provisions contained in the *Australian Citizenship Act 2007*. As part of his work, he is coming to the UK in May to meet with a variety of people to inform his work. To assist him, Dr Lawrence McNamara and Dr Jessie Blackbourn convened an expert roundtable event at the Bingham Centre for the Rule of Law in London on 10 May, 2019. Participants included academics, legal professionals, and members of civil society organisations.

The event was supported by the institutions of Dr McNamara (York Law School at the University of York, and the Bingham Centre for the Rule of Law) and Dr Blackbourn (Centre for Socio-Legal Studies at the University of Oxford).

## THE SUMMARY REPORT

The roundtable was conducted under the Chatham House Rule to facilitate a free-flowing discussion allowing for a challenging exploration of the legal frameworks relating to citizenship revocation. Accordingly, the report does not identify the participants or attribute any comments to individuals. The discussion focused on the following themes with particular reference to the UK and Australia:

- International context
- international obligations: general principles
- international obligations: 'allegiance' and 'own country'
- discrimination
- increasing security/reducing the terrorist threat
- alternatives to citizenship revocation: prosecution, managed return and intelligence gathering
- alternatives to citizenship revocation: comparative examples
- community impact
- human rights obligations: proportionality and current risk in citizenship revocation
- procedural safeguards and fairness
- the need for a test of effective nationality
- justifications

## 1. International Context

- 1.1 In the UK, citizenship stripping laws have developed in the context of a shift in perceived terrorist threat over the past 15 years. The 2005 London bombings were described as a demarcation point, as they were the first international terrorist attacks in the UK since 9/11 to be conducted by UK nationals rather than foreign citizens. Questions began to be raised in government as to whether the questionable allegiance of the attackers meant that they could in turn be treated as foreigners.
- 1.2 A watershed moment for this line of thinking was the development and growth of Islamic State after the 2011 Iraqi insurgency, as it could be argued that those who chose to join the organisation wanted to be treated as foreigners. A number of states, including the UK and Australia, made legal changes which allowed them to revoke the citizenship of some of their nationals who joined Islamic State, and in turn, the number of citizenship revocations has increased over the past decade. Revocation of citizenship raises important questions of state obligations and allegiance, which were the subject of much discussion during the roundtable.

## 2. International Obligations: General Principles

- 2.1 There are a number of international law instruments which are relevant to the issue of citizenship revocation. These include:
  - the [Hague Convention on the Conflict of Nationality Laws](#) (1930), which prioritises state sovereignty by stating that states are free to regulate their own nationality laws, though noting that this should happen in a manner which is not discriminatory, is proportional and not arbitrary, has a legitimate purpose, and avoids statelessness;
  - Article 15 of the [Universal Declaration of Human Rights](#), which states that ‘Everyone has the right to a nationality’ and that ‘No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.’ What constitutes an arbitrary deprivation of nationality was, however, not defined;
  - the [Convention on the Reduction of Statelessness](#) (1961), Article 8 of which forbids revocation leading to statelessness, Article 9 of which forbids discrimination, and Article 6 of which deals with the issue of children. The Convention allows for reservations on its provisions;
  - the [United Nations Convention on the Rights of the Child](#) (1990), Article 8 of which requires state parties to ‘respect the right of the child to preserve his or her identity, including nationality’;
  - the [Convention on the Elimination of All Forms of Discrimination against Women](#) (1979), Article 9 of which grants ‘women equal rights with men to acquire, change or retain their nationality’. This is particularly important, as historically the rights of a woman to citizenship were bound to her husband;
  - [UN General Assembly Resolution 50/152](#) (1996) on the Office of the United Nations High Commissioner for Refugees, which provides for the prohibition of arbitrary deprivation of nationality; and

- The 2013 [Tunis Conclusions of the Expert Meeting Interpreting the 1961 Statelessness Convention and Avoiding Statelessness resulting from Loss and Deprivation of Nationality](#).

2.2 Two provisos to these international law instruments were highlighted. First, as with all international law, the lowest common denominator (in particular reservations and declarations by states to international law instruments) eats in to the foundations of these laws. Secondly, international law also expects states to act against terrorism, just as it expects nationality to be respected. Security Council Resolutions [1373 of 2001](#) (on the prevention and suppression of terrorist financing) and [2178 of 2014](#) (on foreign terrorist fighters) cannot be ignored, and indeed states risk international condemnation if they do so. In attempting to deal with Islamic State, a number of new domestic laws and international law instruments have been passed over recent years. These largely acted to repress those allied to Islamic State. More recently, humanitarian concerns have been integrated. For example, [Security Council Resolution 2396 of 2017](#) on foreign terrorist fighters included provisions for rehabilitation, women and children, and victims of Islamic State. Likewise, the 2018 [Addendum to the Counter-Terrorism Committee's Madrid Guiding Principles](#) (2015) also softened the previous approach. Having outlined the general framework of international law applicable to citizenship revocation, the discussion turned to specific aspects of international law relating to questions of 'allegiance' and what constitutes an individual's 'own country'.

### 3. International Obligations: 'Allegiance' and 'Own Country'

- 3.1 In the wake of mass denationalisations by the Nazi regime in Germany, the international consensus grew against denationalisation. That consensus is being eroded. Recent controversies have emphasised a feature of the international law on citizenship; states have a wide discretion as to how nationality is acquired or revoked. Furthermore, while children have a right to a nationality, a particular nationality is not specified. Concepts of 'allegiance' and 'own country' have been used as determinants.
- 3.2 International law has struggled to define allegiance. Under current domestic legislation in Australia, if an individual fights in a war against Australia (demonstrating allegiance to a foreign power), they can be denationalised. If an individual participates in terrorism then it is a more complex, grey area. Australian law provides for citizenship revocation automatically by conduct, and this is problematic, as the list of terrorism offences considered grounds to revoke within the legislation is quite broad, and therefore it is difficult to prove how far each of these offences constitute a breach of allegiance. There are limits, however, on how the Australian laws can be applied: whereas the UK's reservations on Article 8 of the Convention on the Reduction of Statelessness (1961) means that it can make people stateless, Australia did not enter such a reservation and so cannot make individuals stateless. This debate represents a clash between the rights of the State and the modern human rights context.
- 3.3 The concept of 'own country' was also raised as being necessary to consider in the context of citizenship revocation. This concept is broader than that of citizenship. Further complicating matters is that the concept of nationality in international law is different to domestic understandings of citizenship. An apposite example is the Rohingya people who are considered nationals of Myanmar under international law – Myanmar is their 'own country' – but they are not citizens of Myanmar because that country's domestic law does not give them citizenship. This raises the question of whether, in the case of an individual who has a strong social connection to

Australia, but leaves to fight in a foreign war (and so may lose their citizenship), Australia ceases to be their 'own country'.

#### **4. Discrimination**

- 4.1 It was suggested that citizenship revocation powers discriminate against dual nationals in both the UK and Australia. In Australia, a person's citizenship can ordinarily only be revoked if revocation would not make the person stateless. In the UK, the position is the same, though there are a limited but very significant set of circumstances where citizenship can be revoked even if it would make the person stateless (though even then the Secretary of State must have reasonable grounds for believing that the person is able to become a national of another country). The discrimination concerns arise because revocation will only apply where there is an entitlement (or the requisite belief by the Secretary of State) and this will ordinarily arise because a person has familial ties to another country and so will, for example, discriminate against those who are immigrants or whose families were immigrants. It is arguable that this discrimination could be legitimate in combating the threat of terrorism. But the law of discrimination does not necessarily consider motive. It must be questioned whether single nationals are being treated differently from dual nationals in a discriminatory manner and whether this breaches rights.

#### **5. Increasing Security/Reducing the Terrorist Threat**

- 5.1 One participant noted that there is no indication or evidence that citizenship revocation serves the purpose of increasing security in society. While governments face a legitimate problem in terms of lack of evidence in foreign fighter cases, leaving them unable to prosecute individuals retuning from Islamic State, in the absence of evidence that revocation works, it was suggested that this policy ought not be pursued.
- 5.2 The proposition was put by another participant that citizenship revocation simply pushes potentially problematic and vulnerable individuals on to nations who do not have the capacity to deal with them, compounding the problem in the long term. It should also be considered that revocation may leave individuals vulnerable to rights violations, such as torture in prisons. If the motivation or expectations of revoking citizenship are to deter and secure, it should be noted that the policy is unlikely to achieve either aim. This was considered particularly important in the context of children. There is a significant gap in knowledge regarding how many children are affected, both those taken by their parents and those born in Syria and Iraq. However, recent research has indicated that around 566 children have been born to Western European parents in Islamic State territory. Some of these children could have lived under Islamic State for up to six years. There are implications for the self-identification of these children at vulnerable times in their lives, and questions are raised as to the prospects for children who have been traumatised and victimised under Islamic State and the responsibilities that the West has towards them.
- 5.3 The effectiveness and necessity of citizenship revocation was questioned by another participant, who argued that the policy is justified in the UK on the basis both of the reduction of a security threat (counter-terrorism) and through a deterrent effect.
- 5.4 On the first point, in order to argue the threat is reduced, it would first have to be demonstrated that another nation is best placed to counter the threat. UK nationals whose citizenship has been

revoked have been left with citizenship of (or claims to citizenship of) nations including Syria, Iraq, Bangladesh, and Morocco; it must be questioned whether any of these nations have a greater capacity than the UK to deal with threats. On the argument that they do not, a further question to be raised is whether or not the individual in question would pose a threat to the UK on their return. It is difficult to conduct a thorough and accurate risk assessment at a distance. When the risk is being assessed, three factors should be considered: the desire of the individual to conduct an attack; their capability to plan and carry out such an attack; and their opportunity to commit an attack. In the UK cases so far, these factors are assessed via statements, clearly leaving room for coercion.

- 5.5 A further point to be considered is that leaving Islamic State is dangerous. Those individuals who have managed to escape from Islamic State territory and return to the West are (it was argued) likely to have been driven by a deep desire to return, and therefore would be less likely to pose a security risk. On the issue of gender, it was argued that women are more active in propaganda, and there exists a risk of academics and policy-makers 'believing the hype' and perceiving a larger risk than the one which truly exists. Furthermore, even in cases where individuals returning do pose a security risk there are already many methods which can be used to manage them, the resources and legislation for which are already in place.
- 5.6 Three points were raised which challenged the purpose of citizenship stripping as truly deterrence or counter-terrorism: first, citizenship revocation – by rejecting a person from their own country – plays in to Islamic State propaganda, potentially exacerbating the problem. Secondly, it must be questioned how many of the individuals travelling to join Islamic State actually are dual nationals (and therefore potential candidates for citizenship revocation) – if this number is small, any deterrent effect is unlikely to be significant. Finally, the threat of revoking citizenship undermines any other policies encouraging individuals to leave these groups and rehabilitate. The policy, therefore, actively works against the presumption of possibility of rehabilitation. The possibility of alternatives to citizenship revocation, including reintegration and rehabilitation as well as prosecution and exclusion were raised by a number of participants.

## **6. Alternatives to Citizenship Revocation: Prosecution, Managed Return and Intelligence Gathering**

- 6.1 Existing research on returnees indicates that as a worst case scenario, if they were going to conduct an attack, this would be planned within a year of their return, though it must be noted that due to the lack of availability of case studies the data is likely to be biased towards the dangerous, as those who simply return and never cause harm would not have drawn enough attention to themselves to be included in the data. The rates of recidivism indicated by the data are around 5% in the Western European context, which is very low compared to other crimes. There was some discussion about the 'acceptable' level of recidivism; it was argued that despite the 5% rate of recidivism of returned foreign fighters sounding low, 5% of serious crime is still a very serious matter.
- 6.2 This led to a discussion of prosecution as an alternative approach to citizenship revocation. It was suggested that one in eight male returnees have been successfully prosecuted, and in other cases (it was suggested, particularly those involving women), the choice has been taken not to prosecute. In prosecutions, there is potentially a secondary difficulty created by media hype impinging on what ought be fair trials. Dichotomies in how returnees are perceived were raised, and how these impact on their return. One was the idea that some returnees are a threat while

others are vulnerable and require support ignores that many returnees fall under both categories. Another was the idea that the only options available are citizenship stripping, or an unmanaged, chaotic return — a dichotomy created by a lack of confidence in the alternatives, as the rates of prosecution are arguably very low given the gravity of the threat. This is likely due to the difficulty in bringing prosecutions at all, as intelligence material is problematic in the criminal process, and a lack of ‘hard evidence’ could pose problems in jury trials. There are further concerns surrounding the expanding of the criminal law and the erosion of process protections potentially stemming from attempts to manage this. Also raised was the issue of radicalisation in prisons and the question of whether prisons are suitably equipped to deal with returnees.

- 6.3 In terms of other alternatives, the UK’s 2018 Contest strategy was discussed. This policy provided a framework for managed return, investigation, rehabilitation, and safeguarding. The UK government has not provided an explanation as to why this strategy was jettisoned in a recent case in which the Home Secretary had used the power to revoke citizenship of a UK teenager (Shamima Begum) who had joined Islamic State, and it was argued that reasons ought be provided so that the strategy can be amended as necessary.
- 6.4 One participant suggested that there was a lack of confidence in the alternatives amongst politicians, media, and the public, which could be attributed to a lack of resources. For example, the constant surveillance of an individual is resource-heavy in terms of expense, working hours, and equipment used. There exists a lack of confidence in rehabilitation; it was argued that we do not know how to successfully de-radicalise. This means that citizenship revocation could be a necessary alternative, depending on the details of the case. That said, the point was also raised that the Contest strategy has £2 billion allocated to it, so the resources argument may not hold much water. The decision to abandon the strategy could be seen as opportunistically bending to media opinion, rather than a principled stance.
- 6.5 The point was also raised that the threat of citizenship revocation is a useful tool to the security services within interrogations as part of a carrot-and-stick approach. In this way, the policy potentially could contribute to greater security, yet it would also mean that the framework for the policy becomes more than the straight question of who may pose a risk of committing an attack. Also on the point of security, it was argued that if states revoke in cases where the individual is essentially a single national, this is simply ‘exporting the problem’, potentially to a state less able to manage it, or even contributing to a larger security threat in the future.

## **7. Alternatives to Citizenship Revocation: Comparative Examples**

- 7.1 A number of potentially useful cases were raised. An initial suggestion was to draw a parallel between revocation of citizenship in cases of individuals involved in Islamist terrorism, and the lack of revocation in other examples, such as Irish Republican Army terrorism in Northern Ireland and Britain in the late twentieth century. It was argued that members of the IRA were never perceived as sufficiently ‘other’ for their citizenship to come into question in the same way as Islamic extremists. However, it was also pointed out that citizenship deprivation as a form of exclusion would have been very difficult to enforce within Ireland, given the state of border controls and the Common Travel Area, and that other exclusionary measures were utilised instead, for example exclusion orders and broadcasting bans.
- 7.2 Another participant raised a potential comparison between those travelling to join Islamic State now, and those who travelled to fight in Afghanistan and Bosnia in the 1980s and 1990s, where longitudinal studies of returnees have indicated successful reintegration into society, potentially



providing evidence that revocation on security grounds is unnecessary, though another participant argued there were notable exceptions. Attention was also drawn to recent cases in South Africa where returning families were not securitised, and instead interviewed, monitored, and offered support; this was seen to be a valuable alternative to citizenship revocation. The use of citizenship revocation by Middle Eastern nations such as Bahrain was also discussed. It was further suggested that the historical literature on military demobilisation could prove informative on the question of managing returnees. Case studies were also raised in the discussion of allegiance; for example, whether an Australian fighting in the Israeli state military would be seen as breaching their allegiance to Australia, such that would attract citizenship revocation. In the contemporary context, it was noted that the nature of how war is carried out has changed (cases of Cold War proxy conflicts were highlighted as key examples here). Therefore, if an Australian citizen joins Islamic State knowing that they would be fighting against Australian or allied forces, then this could be a justification for automatic revocation under the legislation.

## **8. Community Impact**

- 8.1 The issue of belonging, highlighted by the presentations, was also thoroughly discussed. While politicians may believe that a policy of citizenship stripping represents an effective community deterrent, and that individual, such as UK teenager Shamima Begum, could become a significant political problem if permitted to return, it was counter-argued that this belief simply represents how far removed the Home Office is from the communities impacted by citizenship revocation. Discussions of Begum indicate that the case has made communities feel insecure in their sense of belonging and identity in the UK. It was argued that the treatment of Begum by the government is surprising, as the stereotypical social perception of women as passive and vulnerable could have played to her benefit, but in practice it did not. It may further be argued that her treatment could in part be attributed to her gender, raising a further question of whether the revocation policy has a discriminating effect on women. A number of questions were raised surrounding gender, how citizenship is passed on, and how children will be impacted were raised, but these were largely suggested as topics for future research. This is particularly pertinent as over half of the Australians who travelled to Islamic State were women and children, indicating the creation of an intergenerational problem of identity. This includes whether and how these children see themselves as Australian, or are regarded by the state as Australian.
- 8.2 Recently published research was referenced, particularly that which examined the impact of citizenship revocation on Muslim communities. One participant raised the issue of a lack of long term impact assessments by the UK government, arguing that other legislation, such as Schedule 7 of the Terrorism Act 2000 which provides for suspicionless stops and searches at UK borders, has changed the way people conduct their lives. Likewise, research has indicated some individuals have been advised not to secure a second citizenship because that may render them more vulnerable to deprivation of their UK citizenship. Another participant referenced recent research showing opposition within Muslim communities to legislation such as Prevent, that many felt their communities were not provided with space to share their views, and felt their views were not being taken in to account by policy-makers. This research argued that Muslim communities felt they were being treated as 'second-class citizens' as a result of policies such as citizenship stripping. The participant emphasised the need to appreciate the impact that counter-terrorism powers such as citizenship revocation have on Muslim communities. Another participant further drew on the issue of identity, linking it to the current rise of far-right extremism, and questioned the potential impact of citizenship revocation on that. More broadly, it was argued that the impact

on different genders, ages and perceptions of communities needs to be considered. There was further concern regarding short term impact assessments by the UK government, which were assessed to be insufficient. The discussion closed with questioning of how useful emblematic cases are in assessing particular powers, particularly in light of how discussion has been driven by the Shamima Begum case and the role of the media in its outcome.

## **9. Human Rights Obligations: Proportionality and Current Risk Citizenship Revocation**

- 9.1 There was a discussion of UK public law and of proportionality in EU and UK law. As EU citizenship depends on national citizenships, the EU standard of review becomes relevant and applies if rights are affected.
- 9.2 Within the UK case law on citizenship, specific rights are identified as part of citizenship, including the right of abode, the right to vote, and consular protection amongst others. Case law in the UK has previously examined the issue of citizenship; particularly relevant are the decisions in *Pham*, notably most notably those in the Supreme Court [2015] UKSC 19 and the Court of Appeal [\[2018\] EWCA Civ 2064](#). Proportionality is a standard of review under the common law just as it is under EU law, and there is likely to be little difference in the outcome. In the past, the concept of unreasonableness has been narrow, though more recently this has been widened. As the rationality test becomes wider, it becomes akin to a proportionality test. A number of factors are considered by this test: what the measure is; what the objective of the measure is; which individuals are targeted and whether this has a rational link to the objective; is the measure too harsh, particularly in terms of individual rights; are less restrictive means available. This last factor is particularly relevant, as citizenship connects to specific rights. It was suggested, however, that it could be argued that an individual should not be able to take advantage of the protection of the law if they have acted so as to declare allegiance or loyalty to another country, repudiating their loyalty to the UK. It was also suggested that case law can be cited to support competing positions and that the facts in any given circumstance will be highly relevant.
- 9.3 Secondly, revocation decisions have focused on past conduct, and not on current risk. This was a core focus of *Pham* [\[2018\] EWCA Civ 2064](#). It raises concerns about arbitrariness, both in procedural and substantive terms. It was argued by one roundtable participant that in order to not be arbitrary, there must be predictability about when citizenship can be revoked (i.e., one should be able to know what the consequences of one's actions will be); a lack of cohesion in current UK policy has so far failed to provide this. In the context of counter-terrorism the courts are trying to resolve this in a climate of polarised views.

## **10. Procedural Safeguards and Fairness**

- 10.1 There is a statutory vacuum in terms of procedural safeguards for individuals whose citizenship has been revoked. Several points were made.
  - First, whereas the UK parliament has been prescriptive with regard to the rights of foreign nationals, it has not been prescriptive with regard to the rights of British nationals. As a result, the protections for British nationals are comparatively weaker than those for foreign nationals, a state of affairs that the Court of Appeal described in [G1 v SSHD](#) [2012] EWCA Civ 867 as 'counter-intuitive'.
  - Secondly, there is a lack of clear timelines.

- Thirdly, the recent repealing of the suspensive right of appeal. Previously, an individual could not be deprived of their citizenship until their rights of appeal were exhausted, but now deprivation can take place before appeal, effectively creating a policy of exile.
  - Fourthly, and related to that, almost all deprivations take place when an individual is outside of the UK – a strategy deliberately adopted by the executive – making it very difficult to challenge the decision and leaving many unable to return to appeal, often due to safety concerns. While the use of Memoranda of Understanding to secure former citizens' safety was raised, it was suggested that these memoranda have been discredited and are not effective. While they can apply for entry clearance, this often requires proceedings in SIAC.
  - Fifthly, proceedings in SIAC are opaque. They are also lengthy, perhaps running to five years or more.
  - Sixthly, it was argued that the purpose of the revocation is not always to achieve an end of revoking citizenship to combat a terrorist threat but instead is often a means to obtain further information, with the threat of revocation for the individual or perhaps also family members being used to get information from the individual.
  - Finally, there were also concerns raised about the very limited provisions for review of the operation of the legislation (s 40B, British Nationality Act 1981).
- 10.2 Reinforcing points made in earlier discussions, it was argued by several participants that the lack of safeguards has a negative outcome for communities which feel injustice from the exercise of revocation powers because the lack of safeguards perpetuates the problematic condition.
- 10.3 It was suggested that the key to revocation policy lies in the procedure and that such a policy should:
- distinguish between those who pose a threat and those who do not, and
  - that actions taken should have to be justified to a judge.
- 10.4 There were further issues of procedural rights raised, though time did not permit discussion. Among them, the real assessment of human rights is about the practical realisation of those rights. If Australian citizens are being deprived it is fairly likely that right to fair trial has been breached. Furthermore, as banishment is criminal punishment, this could cause complications for victims who wish to bring charges against perpetrators in the criminal court, infringing on the victim's right to seek justice. There are also significant issues surrounding the rights of the child, which were highlighted by the Begum case.

## **11. The need for a test of Effective Nationality**

- 11.1 While the UK is not currently concerned with this question, it was argued that it should be, and that cases such as that of David Hicks represent a 'race to the bottom' in terms of how nationality is managed and defined. In clarifying section 40(4A)(c) of the British Nationality Act, it was argued that this is not about holding another nationality, but rather having ties to another nation which may grant an individual eligibility for another citizenship. This includes a broad range of people, especially those who have a migrant connection, or (for example) are eligible for the right of return to Israel. There is also the problem of the impact of other states in defining this, as some states will not allow for the revocation of citizenship, even if the individual has never formally applied for

citizenship. It was therefore argued that there exists a need for a test of effective foreign nationality in citizenship stripping policy.

## 12. Justifications

- 12.1 Justifications for revocation were discussed. The importance of the political context of these decisions was emphasised. For example, the policy of revocation could be perceived as a mechanism for the UK to wash its hands of human rights obligations, as a number of those whose citizenship was revoked have since been killed in US drone strikes, or to dispense with the need to consider such obligations by using extradition to another country. It was noted that an individual can be deprived of citizenship on the basis of 'Islamist extremism' which is not a legal term. Likewise, the case for the justification of proximity, or presence in a proscribed area for citizenship stripping was judged to be inadequate. The political context of SIAC was also considered; over the years, different heads of SIAC have, to various degrees, deferred to the Home Office when making decisions. Both the policy of revocation and Schedule 7 Port Stops were discussed as being politically justified on the basis of providing intelligence rather than managing an individual's security risk. In terms of legal justification within the Act, concerns were raised regarding the threshold for citizenship revocation being made equal to the threshold for deportation.
- 12.2 The utility of Article 3 was also discussed, both in [S1, T1, U1 and V1 v SSHD \[2012\] UK SIAC 106/2011 \(21 December 2012\)](#) and within historical cases, including the changes to citizenship law which deprived many commonwealth citizens of UK citizenship during the process of decolonisation, a line of case law which remains incomplete. Another theme raised throughout was the link between the revocation of citizenship laws and what individual nations are prepared to do to their citizens.

## 13. Summary

- 13.1 A discussion in closing sought to draw out some of the key issues that emerged from the day.
- 13.2 There remain large questions about the necessity and effectiveness of citizenship stripping measures. In the context of citizenship stripping, allegiance to the nation remains a bedrock notion, and if this is severed, can it be a justification for the loss of citizenship? (The WWII situation may be cited but there are also questions about how relevant historical cases are to the present day). Can it be said that revocation is never appropriate? Although allegiance is a bedrock notion, there are numerous international law obligations which temper this, such as statelessness conventions — particularly those designed to protect vulnerable groups — questions of arbitrariness and fair procedure, and accountability of the decision maker before the courts and the general public.
- 13.3 The appeals processes in the context of adverse decisions needs consideration. Questions of defining nationality and the influence of foreign courts in domestic matters both warrant attention. The ways intelligence material can be handled presents difficulties in traditional courts, but the mechanism by which the UK attempts to bypass this (SIAC) has raised other problems.
- 13.4 The question of what the judiciary's role should be is important, especially given the scope of executive power.
- 13.5 Finally, there is also a need for the capacity for global review, particularly where the use of a power increases. In the course of review, access to documents will be important; where the UK

reviewer cannot see all documents, the Australian reviewer does have this power. It is important to ensure that information is made public; for instance, the publication of authoritative statistics is valuable. The importance of public trust must be emphasised; it feeds into social cohesion or certain groups feeling unfairly targeted. If there is a reason for citizenship revocation measures to be used then people should be made aware and kept aware.